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# **EXHIBIT E**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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PAULA PAGONAKIS :  
vs. : NO. 06-027  
EXPRESS, LLC, a/k/a :  
LIMITED BRANDS, INC. :  
- - -

COPY

Saturday, April 28, 2007  
Philadelphia, Pennsylvania  
- - -

Oral deposition of ANA KLANCIC,  
taken pursuant to notice, at the Law Offices  
of Sidney L. Gold & Associates, PC, 1835  
Market Street, Suite 515, Philadelphia,  
Pennsylvania, on the above date, beginning at  
approximately 9:20 a.m., before Ruth L. Mott,  
RPR, CRR and Notary Public.  
- - -

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1 Ana Klancic

2 how did a store get an allocation of hours?  
3 Do you understand what I mean? Did the  
4 stores have a certain amount of hours that  
5 they could pay associates each week?

6 A. Yes.

7 Q. And how was that determined? How  
8 did a store -- Cherry Hill -- how would  
9 Cherry Hill be told how many hours they had  
10 that week?

11 A. It was based on a matrix and that  
12 matrix was based on your volume.

13 Q. And could the hours -- was it given  
14 to you in a week or was it a different  
15 period? Do you understand what I'm saying,  
16 how they say you have blank number of hours  
17 per week or was it a different timeframe?

18 A. Weekly.

19 Q. Did the hours allocation change  
20 each week or in general did it remain the  
21 same?

22 A. Changed every week.

23 Q. Were store managers expecting to  
24 keep the total hours worked within that  
25 budget?

1 Ana Klancic

2 A. Yes.

3 Q. And the budget would include --  
4 would encompass the salaried hours as well,  
5 correct? Do you understand what I'm saying?  
6 If a store was given -- let's just throw out  
7 a number -- say a thousand hours -- if a  
8 store was given a thousand hours in a week --  
9 and I know that number's just arbitrary,  
10 pulled out -- would those thousand hours --  
11 it's not just associate hours, it would also  
12 include the store manager and co-manager  
13 hours, correct?

14 A. Yes.

15 Q. So the store managers and  
16 co-managers -- in general was it expected  
17 that they work at least those 40 hours and  
18 potentially more per week in order to  
19 maintain the budget?

20 A. Yes.

21 Q. Just so I understand, a store  
22 manager, they were automatically budgeted for  
23 40 hours each week, right?

24 A. Correct.

25 Q. So if a store manager only worked

1 Ana Klancic

2 25 hours in a week, that store essentially  
3 lost 15 hours on the budget, right?

4 A. The store manager position?

5 Q. Yes. If a store manager, in week  
6 one of the year where Cherry Hill's budgeted  
7 1,000 hours, arbitrary number, thousand  
8 hours, store manager only work 25 hours that  
9 week, in effect the store manager left 15  
10 hours on the table; they've lost 15 hours on  
11 the budget, right?

12 A. That's correct.

13 Q. So the store manager -- in general,  
14 I would assume the store manager and  
15 co-managers, when you were in those  
16 positions, were expected to work 40 and even  
17 more hours per week, right?

18 A. Correct.

19 Q. Okay. Opening and closing -- was  
20 there certain employees at the store who were  
21 required to be at the store when the store  
22 opened and closed? Do you know what I mean?

23 A. No.

24 Q. Was a store manager, a co-manager,  
25 was there any level of employee that was

1 Ana Klancic

2 required to be at the store when it opened?

3 A. Yes.

4 Q. What level?

5 A. A store manager or assistant  
6 manager.

7 Q. Or co-manager?

8 A. Co-manager.

9 Q. Co and assistant, in case we used  
10 it interchangeably, are the same for purposes  
11 of this deposition; do you agree?

12 A. Yes.

13 Q. Are they referred to as key  
14 holders?

15 A. Yes.

16 Q. Okay. And so one of those, either  
17 a store manager or a co-manager, would have  
18 to be at the store when it opened?

19 A. Correct.

20 Q. How about when it closed?

21 A. The same; store manager or an  
22 assistant or co-manager.

23 Q. Okay. And in general -- I realize  
24 each mall is different, but in general were  
25 there set hours that the stores would remain

Ana Klancic

open?

A. Yes.

Q. What were those?

A. Open at 10:00 a.m.

Q. Is that to the public open?

A. Yes.

Q. Okay.

A. And close at 9:30 p.m.

Q. Okay.

A. Again, pending the center.

Q. The mall. Okay. And if a store opened to the public at 10:00 a.m., did the store officially open for the employees prior to that?

A. Yes.

Q. Okay. How many hours or minutes did it open typically prior to it opening to the public?

A. Depending on the location, two hours.

Q. Okay. And if a store were to close to the public at 9:30 p.m., what time did typically the store manager or co-manager close that store?

1 Ana Klancic

2 A. 11:00 p.m.

3 Q. There's some duties that have to be  
4 performed both before and after -- both  
5 before opening and after closing by the  
6 management?

7 A. Correct.

8 Q. Okay. And so when scheduling --  
9 who in general is responsible at a store for  
10 scheduling the hours? Is there a certain  
11 position within the store who schedules?

12 A. Well, it's either the store manager  
13 or the co-manager that's in charge of the  
14 human resources division responsibility.

15 Q. Okay. Now, in your stores when you  
16 were district manager in the stores within  
17 your district was the schedule for the week  
18 published in advance of that work week?

19 A. Yes.

20 Q. And did the associates and managers  
21 have -- if they had a conflict, they couldn't  
22 work one evening because of a family  
23 obligation or some other obligation outside  
24 of work did they have the opportunity to talk  
25 to that scheduler to try to modify the



1 Ana Klancic

2 schedule?

3 A. Yes.

4 Q. And so if, for example, say I'm a  
5 store manager, my co-manager is scheduling  
6 and the co-manager schedules me for five  
7 straight days and then two days off -- just  
8 throw it out as a seven-day week, and I  
9 wanted to, if possible, have -- work three  
10 days, take a day off, work three more days,  
11 would that be something that I could raise  
12 with the scheduler prior to the beginning of  
13 the work week? I would see the schedule and  
14 could raise that with the scheduler?

15 A. Yes.

16 Q. Finally, as the opening and  
17 closing, if you are the key holder  
18 responsible for opening and closing -- I'm  
19 assuming it's imperative that that key holder  
20 arrive to the store on time when opening the  
21 store because you've got other associates who  
22 are there waiting for the store to be opened?

23 A. Correct.

24 Q. Okay. I just want to go through  
25 some of the policies. I'm assuming you're

1 Ana Klancic

2 A. Yes.

3 Q. And same as prohibiting harassment  
4 during your employment?

5 A. Yes.

6 Q. And the written policies also  
7 require the accommodation, the reasonable  
8 accommodation of disabilities as well; do you  
9 agree with that?

10 MR. BAILEY: Object to the  
11 form.

12 THE WITNESS: Yes.

13 BY MR. CAMPBELL:

14 Q. Okay. And just finally on the open  
15 door policy, if you as district manager -- an  
16 open door complaint could come to the  
17 district manager, correct?

18 A. Yes.

19 Q. And you as a district manager  
20 received a complaint that involved the  
21 allegation of discrimination or harassment,  
22 would you partner with human resources in  
23 those situations?

24 MR. BAILEY: Object to the  
25 form.

1 Ana Klancic

2 THE WITNESS: Yes.

3 BY MR. CAMPBELL:

4 Q. So if human resources wasn't aware  
5 of a complaint from an employee of  
6 discrimination or harassment -- strike that.

7 Any complaints that you received of  
8 discrimination or harassment, is it safe to  
9 say that you would have notified human  
10 resources of those complaints?

11 MR. BAILEY: Object to the  
12 form.

13 THE WITNESS: Human resources  
14 and my regional manager.

15 BY MR. CAMPBELL:

16 Q. You would have notified human  
17 resources and your regional manager of any  
18 complaint that you received of discrimination  
19 or harassment during your employment?

20 MR. BAILEY: Object to the  
21 form.

22 THE WITNESS: Yes.

23 BY MR. CAMPBELL:

24 Q. If you'd just let me finish my  
25 question just so the record is clear -- any

1 Ana Klancic

2 complaints that you received during your  
3 employment with Express of discrimination or  
4 harassment you would have notified your  
5 regional manager and the human resources  
6 department with those complaints, correct?

7 MR. BAILEY: Object to the  
8 form.

9 THE WITNESS: I can't say that  
10 it was always both.

11 BY MR. CAMPBELL:

12 Q. Okay. One or the other?

13 A. One or the other.

14 Q. Okay. If an investigation was  
15 required during your employment of a  
16 complaint of harassment or discrimination,  
17 would you partner with human resources?

18 A. Yes.

19 Q. And that was always the case?

20 A. Yes.

21 Q. Let's move on to Ms. Pagonakis and  
22 her claims. I want to show you a couple  
23 documents so we can put a timeframe as to  
24 this matter.

25 (Documents marked Deposition

1 Ana Klancic

2 years.

3 Q. I'm talking about when you were a  
4 district manager that five-year period; was  
5 the Christiana Mall store at all times within  
6 your district?

7 A. Yes.

8 Q. Okay. Now, you don't recall seeing  
9 the letters, these two letters that I've  
10 shown you, Exhibits 3 and 4, correct, as you  
11 sit here today?

12 A. Correct.

13 Q. Do you believe that you received  
14 these letters or no?

15 A. I'm not sure.

16 Q. Okay. Let me just ask you, first  
17 of all, is it your understanding that Ms.  
18 Pagonakis voluntarily resigned from her  
19 employment with Express?

20 A. Yes.

21 Q. Okay. Now, let's focus on Exhibit  
22 4, first of all, the longer letter, where Ms.  
23 Pagonakis is referring to a medical leave  
24 that started on February 3, 2004. Do you see  
25 that in the second paragraph?

1                                   Ana Klancic

2       her over that period?

3           A.     Those dates to me, I don't know.  
4       Like I can't remember what those dates are.  
5       I mean, I obviously talked to Paula  
6       Pagonakis. She was one of my assistant  
7       managers, co-manager, but I don't remember  
8       dates.

9           Q.     Okay. And I guess the key point of  
10      my question is, Ms. Pagonakis says that she  
11      didn't talk to you essentially -- she didn't  
12      talk to you from February 3, 2004 until her  
13      resignation. Do you have any reason to  
14      disagree with that?

15          A.     I really don't recall.

16          Q.     Okay. So you don't recall any  
17      conversations that took place during that  
18      period?

19          A.     No, I don't.

20          Q.     Okay. Now, Ms. Pagonakis  
21      transferred from an Ohio store to Delaware.  
22      When did you first come into contact with Ms.  
23      Pagonakis from your recollection?

24          A.     When I got promoted to the district  
25      manager she was already a sales associate in

1                                   Ana Klancic

2       Pagonakis testified that if she woke up in  
3       the morning and there was fog in the area  
4       that she would call the store and say, I  
5       can't come in until the fog has lifted.

6           A.     That's correct.

7           Q.     Or in the winter months -- if in  
8       the winter months it got dark earlier, her  
9       schedule would be modified due to when the  
10      sun was going down; did you understand that?

11          A.     Yes, that's correct.

12          Q.     So in the summer months she might  
13      be able to work a longer schedule into the  
14      evening versus in the winter months?

15          A.     Correct.

16          Q.     Okay. At the time of this  
17      promotion into the brand sales lead position,  
18      who was the store manager at the Christiana  
19      Mall store?

20          A.     Kristyn Bosley.

21          Q.     And was Ms. Bosley the store  
22      manager all the way through March 2004?

23          A.     Yes.

24          Q.     Okay. And so the first time that  
25      you became aware of any accommodations being

1                                   Ana Klancic  
2       discussions directly with Ms. Pagonakis as to  
3       what her physical or mental condition was  
4       that caused her to need to work this shift?

5           A.     Yes.

6           Q.     When did that conversation take  
7       place?

8           A.     I don't recall.

9           Q.     Well, she resigned in March 2004.  
10       Would it have been close in time to the  
11       resignation or would it have been when we're  
12       talking about these -- closer in time to  
13       promotions to brand sales lead?

14          A.     It was closer to her resignation.

15          Q.     What do you recall from that  
16       conversation?

17          A.     I was -- at the time we were  
18       eliminating a lot of special schedulings with  
19       the company, and human resources -- I'm not  
20       sure who that person was at the time. I  
21       think also with Scott Miller; he was our  
22       regional vice president. We were eliminating  
23       a lot of the special positions in scheduling,  
24       and then Paula Pagonakis came up of why she  
25       worked a special schedule. You know, I



1 Ana Klancic

2 informed him of what her disability was, and  
3 they told me that I needed to get  
4 documentation from her because we didn't have  
5 anything on it.

6 Q. Okay. Let me just take one step  
7 back. It's my understanding from the charges  
8 of discrimination and testimony that November  
9 2003 is approximately the time when Ms.  
10 Pagonakis was asked to provide medical  
11 documentation. Does that help your  
12 recollection as to when this conversation  
13 took place when the scheduling issues were  
14 addressed?

15 A. I'm not sure.

16 Q. Okay. You don't have any reason to  
17 disagree with that timeframe, though, the  
18 November-December 2003 timeframe?

19 A. I don't remember at all those  
20 dates.

21 Q. If those were the dates -- what I'm  
22 asking you is, if that's what the record  
23 shows in this case, you don't have any  
24 specific recollection to say that it's a  
25 different date?

1 Ana Klancic

2 A. That's correct.

3 Q. Okay. Now, prior to this  
4 conversation -- we'll get into that  
5 conversation and what you did after that  
6 conversation.

7 MR. BAILEY: Object to the  
8 form. This conversation --

9 MR. CAMPBELL: Okay. I'll be  
10 a little more specific.

11 BY MR. CAMPBELL:

12 Q. Prior to the discussions about  
13 Express's decision to eliminate special  
14 schedules, prior to that date was Ms.  
15 Pagonakis always accommodated to your  
16 knowledge?

17 A. Yes.

18 Q. And did you make the decision with  
19 Ms. Bosley to promote Ms. Pagonakis to the  
20 brand sales lead position?

21 A. Along with our regional manager.

22 Q. Okay. Was that a part-time or  
23 full-time position?

24 A. Full-time.

25 Q. And did Ms. Pagonakis work

1                                   Ana Klancic  
2       full-time hours, if you recall?

3           A.     She did some work for me from home,  
4       but it did come to 40 hours total by the end  
5       of the week.

6           Q.     So in the store she would work less  
7       than 40 hours?

8           A.     In some occasions.

9           Q.     Okay. And if she worked less than  
10      40 hours in the store, she would pick up  
11      hours at home?

12          A.     Yes.

13          Q.     Did you have any other employees in  
14      your district at any time that were permitted  
15      to work at home --

16          A.     No.

17          Q.     -- when you were district manager,  
18      just so I'm clear?

19          A.     No.

20          Q.     Okay. Why did you permit Ms.  
21      Pagonakis to work from home?

22          A.     Because she wasn't able to drive in  
23      the fog or rainy days, and the regional  
24      manager was aware of this.

25          Q.     Aware of Ms. Pagonakis being

1                                   Ana Klancic

2       permitted to work at home?

3           A.     On those special days.

4           Q.     Okay.  When you say special days,  
5       these days weren't scheduled in advance, the  
6       days came up if Ms. Pagonakis said she  
7       couldn't drive to the store for some reason?

8           A.     Correct.

9           Q.     Be it fog, snow or some other  
10      weather condition?

11          A.     Correct.

12          Q.     So on those days, what did Ms.  
13      Pagonakis do at home?  She called into the  
14      store and said, hey, it's raining today, I  
15      don't think I'm going to be able to make it  
16      in?  What was she supposed to do?

17          A.     Well, because it was one of my  
18      highest volume stores I spent at least one to  
19      two days a week there, so I would always have  
20      special things for her to do.  She was in  
21      charge of my district newsletter for the  
22      district, so she would do that on a weekly  
23      basis, or she did some reference checks for  
24      the store for the sales associates.

25          Q.     Okay.  So you'd have some special

1 Ana Klancic

2 time of this work-at-home schedule, you know  
3 what I mean, that if she worked at home  
4 for --

5 A. I think so.

6 Q. Okay. Did you notify each of the  
7 regional managers or just one or some?

8 A. I don't recall.

9 Q. Did you ever notify human resources  
10 of this work-at-home schedule?

11 A. No.

12 Q. Why not?

13 A. It was never a question or concern  
14 from my supervisor.

15 Q. Your supervisor meaning who?

16 A. Whoever was in charge at the time,  
17 if it was my regional manager or Scott Miller  
18 or the RVP.

19 Q. But they may not have been aware of  
20 her working at home, right?

21 A. I don't know.

22 Q. Okay. So the bottom line is you,  
23 in your view, didn't need to get approval  
24 from human resources for this work at home?

25 A. Correct.

1                                   Ana Klancic

2           Q.    Now, when you're advised by the  
3   Regional VP Scott Miller and human resources  
4   that the special schedules needed to be  
5   eliminated, did that include working at home?

6           A.    Yes.

7           Q.    Okay. Was that made specific to  
8   you that you cannot work -- associates and  
9   managers are not permitted to work outside of  
10   the store?

11          A.    Correct.

12          Q.    Okay. So at that point in time --  
13   and that was applicable to all associates and  
14   managers at that time when they come to you,  
15   it's not just Paula Pagonakis, it's every  
16   employee in your district?

17          A.    Correct.

18          Q.    And every employee in your district  
19   was prohibited from having from that point  
20   forward some sort of a special schedule, so  
21   to say, outside of the typical scheduling  
22   process?

23          A.    Correct.

24          Q.    Do you know why? Did Scott Miller,  
25   your Regional VP, or human resource

1                                   Ana Klancic

2       department tell you why that Express policy  
3       was being put in place or did they just tell  
4       you the policy?

5           A.     Yes, they told us why, because it  
6       was -- the hours were getting obviously  
7       tighter at that time of year and we needed  
8       the sales associate/managers to all be  
9       present in the store.

10          Q.     That time of year being the holiday  
11       season?

12          A.     Yes.

13          Q.     So you learn of the prohibition  
14       against work-at-home schedules and the  
15       special schedules, and I think you testified  
16       that you went to Ms. Pagonakis after that  
17       meeting?

18          A.     Yes.

19          Q.     Okay. And was anybody with you  
20       when you spoke with Ms. Pagonakis at that  
21       time?

22          A.     I don't recall.

23          Q.     Okay.

24          A.     If there was, it would have been  
25       Kristyn Bosley, the store manager.

1                                   Ana Klancic

2           Q.    Okay.  What do you recall from the  
3 conversation with Ms. Pagonakis at that time?

4           A.    The only thing that I recall is  
5 letting her know that human resources needed  
6 a doctor's note, you know, obviously  
7 explaining her needs.

8           Q.    Okay.  And did you tell her who she  
9 should contact?

10          A.    Who she should contact?

11          Q.    Yes.  Did you give her a location  
12 or person that she should provide those  
13 doctors' notes to?

14          A.    Yes.

15          Q.    Okay.  Who was that, if you recall?

16          A.    I don't recall.

17          Q.    Could it have been HR Direct or you  
18 just --

19          A.    It was definitely human resources.

20          Q.    Did you ask her at that time what  
21 was her disability?

22          A.    Yes.

23          Q.    What did she tell you, if you  
24 recall?

25          A.    Because of this accident that she



1                   Ana Klancic

2       had she was not able to drive in the dark;  
3       she was not able to drive in the rain or fog.

4           Q.     Did she tell you that -- well,  
5       first of all, how long ago was the accident?  
6       Was it close in time? Was it many years  
7       before; do you not know?

8           A.     It was many years before.

9           Q.     Did she say, you know, that I get  
10      headaches? What was her condition? Did she  
11      have a diagnosis that she told you?

12          A.     I think she lost like direction,  
13      like she wouldn't know -- she would get lost  
14      and not know where she was.

15          Q.     Okay. When I say diagnosis, like,  
16      for example, I tell you that I have high  
17      blood pressure or I have diabetes. Did she  
18      put a name to what her condition was?

19          A.     I don't recall.

20          Q.     Do you recall if Ms. Pagonakis  
21      provided the medical documents to human  
22      resources as you requested?

23          A.     No, she did not.

24          Q.     Why not?

25          A.     She actually provided me with some

1 Ana Klancic

2 MR. CAMPBELL: Okay. Then we  
3 can go through each one.

4 BY MR. CAMPBELL:

5 Q. Let's start at paragraph 2 on page  
6 1 of the declaration and let's go through  
7 this. The last sentence you state in your  
8 capacity as district manager you had fairly  
9 frequent contact with and supervision of  
10 Paula Pagonakis. The frequent contact, how  
11 so?

12 A. Weekly.

13 Q. Because you were in that store at  
14 times?

15 A. Correct, and phone conversations.

16 Q. Okay. Now, paragraph 3 states that  
17 I was aware that Paula -- and you're  
18 referring to Ms. Pagonakis as Paula, correct?

19 A. Correct.

20 Q. Suffered from medical  
21 conditions/disabilities that necessitated  
22 certain accommodations in the workplace.

23 I'm going to ask you, first of all,  
24 we've gone through extensively as to your  
25 conversations with Ms. Pagonakis. What

1                                   Ana Klancic  
2       medical condition/disability did Ms.  
3       Pagonakis suffer from?

4           A.     Not being able to drive at night or  
5       in the fog or in the rain.

6           Q.     Okay. But you don't know what  
7       medical condition necessitated those  
8       symptoms, so to say?

9           A.     No, I'm not a doctor.

10          Q.     Okay. Well, it says you were aware  
11       of it, that she suffered, but you don't know  
12       what specific disability or medical condition  
13       that she had?

14          A.     No.

15          Q.     Okay. And the accommodations in  
16       the workplace, what was your understanding of  
17       the accommodations that Ms. Pagonakis  
18       believes she required?

19          A.     I'm sorry; can you repeat that?

20          Q.     Well, you say that you were aware  
21       that Paula suffered from a medical condition  
22       and disability or slash disability and that  
23       that condition necessitated certain  
24       accommodations in the workplace.

25                   Do you see that first sentence?

1                                   Ana Klancic

2       go get something to eat, just sit down for a  
3       few minutes.

4           Q.     Were her breaks any different than  
5       the breaks provided to any other associate at  
6       the store?

7           A.     Yes.

8           Q.     How so?

9           A.     She needed more frequent breaks  
10      than anybody else.

11          Q.     Okay. Then B it says, only  
12      scheduling Paula only for daylight hours. Do  
13      you see that?

14          A.     Yes.

15          Q.     And that's what we talked about?

16          A.     Yes.

17          Q.     And it wasn't only scheduling for  
18      daylight hours, she also had a flexible  
19      schedule in that some mornings she may not be  
20      able to come in at all?

21          A.     Correct.

22          Q.     And it was unexpected, unless she  
23      could predict the weather; if it was foggy on  
24      Tuesday she couldn't come in until the fog  
25      was lifted?

1 Ana Klancic

2 A. Correct.

3 Q. So was it your understanding that  
4 Paula -- during her tenure under your  
5 supervision while you're district manager  
6 that Paula Pagonakis never opened the store  
7 on a regular basis?

8 A. I don't remember.

9 Q. Okay. How about closing the store  
10 during the night hours? Is your recollection  
11 that she regularly closed the store?

12 A. She did do it a few times.

13 Q. But not on a regular basis?

14 A. No.

15 Q. C is not assigning Paula tasks that  
16 called for climbing. Do you recall that  
17 accommodation?

18 A. Yes.

19 Q. Okay. When do you recall learning  
20 of that need for accommodation?

21 A. From the beginning.

22 Q. Okay. And scheduling Paula for a  
23 day off every three or four days, when did  
24 you learn of that?

25 A. From the beginning.

1 Ana Klancic

2 Q. Meaning what, from the beginning of  
3 what, her employment?

4 A. Our conversation and from her  
5 employment from the conversations that I had  
6 with Kristyn Bosley.

7 Q. Okay. And then finally E,  
8 periodically allowing Paula to work from  
9 home. That didn't begin until she was  
10 promoted to a brand sales lead position,  
11 correct?

12 A. Correct.

13 Q. And then you finally conclude that  
14 Paula's direct supervisors at the Christiana  
15 Mall store were also aware of her medical  
16 conditions and her need for workplace  
17 accommodations.

18 You weren't aware of what medical  
19 condition she actually suffered from, right?

20 A. Yes.

21 Q. What medical condition did she  
22 suffer from? We've talked about the symptoms  
23 but you don't know what condition she  
24 suffered from, right?

25 A. No.

1                                   Ana Klancic

2           Q.    Do you know whether the supervisors  
3 knew what condition she suffered from?

4           A.    I don't know.

5           Q.    Okay. Let me ask you, did you ever  
6 receive any complaints from either Ms. Bosley  
7 or other managers in the store about, hey,  
8 why am I always opening or closing and Ms.  
9 Pagonakis doesn't have to do it as a  
10 co-manager?

11          A.    Yes, I did receive them.

12          Q.    Okay. Because other co-managers  
13 had to work additional openings and closing  
14 because Ms. Pagonakis wasn't doing it, right?

15          A.    Correct.

16          Q.    And so their schedules would  
17 necessitate them always coming in early or  
18 potentially working later hours than a  
19 typical schedule had the additional  
20 co-manager also opened and closed?

21          A.    That's correct.

22          Q.    Did you inform human resources of  
23 these complaints?

24          A.    No.

25          Q.    What did you do about the

1                                   Ana Klancic

2                   Is that the date that you recall  
3 promoting her into that position?

4           A.     Yes.

5           Q.     You say, I felt that Paula was an  
6 asset to our team, and then you finalize that  
7 paragraph with, I agreed to keep Paula's  
8 workplace accommodations in place at this  
9 time because I wanted to encourage Paula to  
10 remain part of our team.

11                   Do you see that?

12          A.     Yes.

13          Q.     No other co-managers in your  
14 district were given similar work schedules as  
15 to what Ms. Pagonakis had, correct?

16          A.     Correct.

17          Q.     Were other co-managers given a set  
18 time to arrive at the store each morning?

19          A.     Yes.

20          Q.     Okay. And the other co-managers,  
21 would they be disciplined if they showed up  
22 15 minutes late to work on a regular basis?

23          A.     If it was, you know, frequent.

24          Q.     Okay. But Ms. Pagonakis, if she  
25 was going to show up late she could call in



1                                   Ana Klancic

2       and say, it's foggy where I'm living, I'm  
3       going to be late?

4               A.     Correct.

5               Q.     Or she could call in and say, it's  
6       going to be rainy, I can't drive in?

7               A.     Correct.

8               Q.     And she was never disciplined for  
9       that?

10              A.     No.

11              Q.     Now, paragraph 5, in the fall of  
12       2003 my direct supervisors and  
13       representatives of defendants human resources  
14       department inquired as to why Paula was  
15       receiving workplace accommodations, including  
16       allowing Paula to work less than a 40-hour  
17       work week.

18                   Do you see that sentence in  
19       paragraph 5?

20              A.     Yes.

21              Q.     First of all, does this refresh  
22       your recollection as to when the special  
23       schedule prohibition went into place?

24              A.     Yes.

25              Q.     Okay. That's what you're referring

1                                   Ana Klancic  
2       to in this sentence, correct?

3           A.     Correct.

4           Q.     Okay. And was it true that after  
5       Ms. Pagonakis was promoted to co-manager in  
6       June 2003 that she was permitted to work less  
7       than a 40-hour work week as a co-manager?

8           A.     Yes.

9           Q.     And why was that?

10          A.     Because of her restrictions to  
11       working in the weather.

12          Q.     Okay. And so other co-managers or  
13       the store manager would have to work  
14       additional hours in order to make up for  
15       those lost hours?

16          A.     Not always.

17          Q.     At times?

18          A.     At times.

19          Q.     And they certainly would have to  
20       open when Ms. Pagonakis couldn't open?

21          A.     That's correct.

22          Q.     And they'd have to close when Ms.  
23       Pagonakis couldn't close?

24          A.     But there was always more than one  
25       manager working so there wasn't any

1 Ana Klancic

2 additional people that needed to come in.

3 Q. Did any other co-manager during  
4 your tenure as district manager have the  
5 ability to not on a regular basis open or  
6 close the store?

7 A. I'm sorry; can you repeat that?

8 Q. Was any other co-manager during  
9 your tenure as district manager at Express  
10 given the accommodation of not having to open  
11 or close on a regular basis?

12 A. I don't remember.

13 Q. Okay. It's a pretty regular and  
14 frequent duty of a co-manager to open and/or  
15 close a store, correct?

16 A. Correct.

17 Q. And when you let Ms. Pagonakis work  
18 less than a 40-hour work week she was  
19 nevertheless being paid a salary of 40 hours  
20 a week as a co-manager, correct?

21 A. Correct.

22 Q. Now, the last sentence in paragraph  
23 5 says, I was instructed by my superiors at  
24 this time -- and I'm assuming that is fall  
25 2003, the at this time?

1 Ana Klancic

2 A. Yes.

3 Q. Okay. To cease all accommodations  
4 until Paula provided medical documentation of  
5 her need for the accommodations. Do you see  
6 that?

7 A. Yes.

8 Q. And it's your recollection that  
9 Paula was never able to provide those medical  
10 documentation?

11 A. Not that I can recollect.

12 Q. Okay. And from this date forward  
13 because she couldn't provide the medical  
14 documents she had to work a typical  
15 co-manager schedule?

16 A. Correct.

17 Q. And paragraph 6, the last line of  
18 page 2, it says, the termination of Paula's  
19 employment; you agree that she voluntarily  
20 resigned. We went through those letters,  
21 correct?

22 A. Yes.

23 Q. So her employment wasn't terminated  
24 by Express?

25 A. No.

1                                   Ana Klancic

2           is that correct?

3           A.    Oh, I don't know about that.

4           Q.    Okay. Do you have knowledge of how  
5           a discrimination complaint would proceed at  
6           the store? I don't want to get anything too  
7           much into your -- do people file a charge of  
8           discrimination with the store manager? Do  
9           they have to go to HR Direct? I'm not asking  
10          actually specifically, just general knowledge  
11          of how that works.

12          A.    It should go to human resources.

13          Q.    Now, are you aware of any  
14          complaints that were written complaints of  
15          discrimination at that store that Paula  
16          worked at?

17          A.    No.

18          Q.    Okay. Now, the defense went  
19          through your declaration that you executed  
20          on, what is that, the 9th day of March?  
21          Exhibit 7. Is everything you stated in this  
22          declaration true?

23                       MR. CAMPBELL: I'm going to  
24          object. She's gone through in detail  
25          each sentence of the declaration.

1 Ana Klancic

2 Ms. Pagonakis after December 23, 2003?

3 A. Yes.

4 Q. Okay. So if she would have shown  
5 this to you and you reviewed it and it was  
6 your ultimate choice, although you don't  
7 specifically recall it, you would have  
8 accommodated these restrictions, right?

9 A. Yes.

10 MR. CAMPBELL: Okay. I don't  
11 have any further questions at this time.

12 MR. BAILEY: I don't have  
13 anything.

14 MR. CAMPBELL: We can close  
15 the record for today. I think your  
16 counsel can talk to you about reading.

17 MS. WEXLER: We'll read and  
18 sign.

19 MR. CAMPBELL: With that we  
20 can close the record for today. Again,  
21 thank you very much for coming out on a  
22 Saturday.

23 (Witness excused.)

24 (Deposition concluded at 12:05 p.m.)

25 - - -

**Hinkle, Jennifer**

**From:** Hinkle, Jennifer  
**Sent:** Monday, December 29, 2003 1:31 PM  
**To:** EXP Region 20011 - Klancic, Ana  
**Subject:** RE: (no subject)

Yes and no, we do make every attempt to make an accommodation for an associate. We do however, always have the ability to say the restrictions are too severe and we cannot work with them. In these situations we would work with the lawyers to ensure we were OK with our position. In Paula's situation we may not have a choice because she has been working only day hours for years and years. It would be hard for us now to say that we couldn't accommodate her in this area. Does that make sense?

Have you received a copy of the restrictions? If so, what are your thoughts? If you want to discuss live today, call me at 614-226-6694.

Thanks Ana.

-----Original Message-----

**From:** EXP Region 20011 - Klancic, Ana  
**Sent:** Monday, December 29, 2003 1:12 PM  
**To:** Hinkle, Jennifer  
**Subject:** RE: (no subject)

Hi Jennifer, thank you for getting this matter taken care of. But I do have a question? Do I really have a choice, but to accommodate her disability?

-----Original Message-----

**From:** Hinkle, Jennifer o  
**Sent:** Monday, December 29, 2003 1:08 PM  
**To:** PPag4@aol.com  
**Cc:** EXP Region 20011 - Klancic, Ana  
**Subject:** RE: (no subject)

Hi Paula, Susan faxed me a copy of your restrictions. It is now up to Ana and your Store Manager to determine if they can make the accommodations outlined by your doctor.

Ana, if you have any questions, or need any assistance while Tara is on PTO, please let me know.

Thanks,  
Jennifer Hinkle  
HR Manager, Express

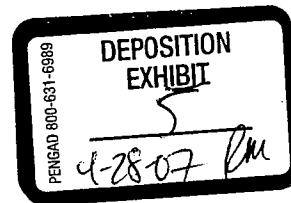
-----Original Message-----

**From:** PPag4@aol.com [mailto:PPag4@aol.com]  
**Sent:** Friday, December 26, 2003 4:46 PM  
**To:** Hinkle, Jennifer  
**Subject:** Re: (no subject)

Ms. Hinkle,

I have to again thank you for your direct and clear communication. I will follow up with Susan as recommended.

Paula J. Pagonakis



12/30/2003

EXPRESS-PAG000040